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6  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 VIRGINIA PEREZ, individually,  
11 and on behalf of all others similarly  
12 situated,

13 Plaintiff,

14 v.

15 MAID BRIGADE, INC., a  
Delaware Corporation, and BMJ  
16 LLC, a California Limited Liability  
Company,

17 Defendants.  
18  
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21  
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Case No. C 07-3473 SI

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS-ACTION SETTLEMENT**

Date: June 6, 2008  
Time: 9:00 a.m.  
Dep't: 10

*Assigned to Hon. Susan Illston*

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1 ***I. Introduction.***

2 After mediation in connection with an appeal to the Ninth Circuit regarding this  
 3 Court's decision on the arbitration issue, the parties have achieved a settlement of this  
 4 case.<sup>1</sup> Accordingly, this matter now comes before the Court for (1) conditional  
 5 certification, for settlement purposes only, of a class pursuant to Rule 23 of the Federal  
 6 Rules of Civil Procedure; (2) preliminary approval of the Stipulation of Settlement  
 7 entered into between Plaintiff, on behalf of the absent Class Members whom she seeks to  
 8 represent, and Defendants; (3) approval of the form and method of class notice,  
 9 including the proof-of-claim form; (4) the appointment of Harris & Ruble as Qualified  
 10 Settlement Administrator; (5) an order approving the time within which notice will be  
 11 given, as well as when claims, opt-outs, and/or objections must be received; and (6) an  
 12 order approving the time within which Class Counsel must file for final approval of the  
 13 settlement, the time within which Class Counsel must file a motion for fees and costs,  
 14 and a date in which the Court shall hear any objections and consider entering an order of  
 15 final approval of the settlement.

16 This Motion is supported by the Declaration of Alan Harris, counsel for Plaintiff.  
 17 A copy of the Stipulation of Settlement is attached as Exhibit 1 to that Declaration.  
 18 Copies of the proposed form of notice (Exhibit 2) and claim form to be completed by  
 19 Class Members who do not opt out (Exhibit 3) are also attached.

20 ***II. Summary of the Case.***

21 Plaintiff commenced this action was commenced as a putative class action,  
 22 alleging labor-law violations by Defendants Maid Brigade, Inc. and BMJ LLC  
 23 (collectively, "Settling Defendants"). Defendant BMJ LLC employed Perez as a maid.  
 24 Defendant Maid Brigade, Inc. is the franchisor of BMJ LLC. Plaintiff alleges that, for  
 25 certain periods of her employment, she did not receive a minimum wage, and she also

26  
 27 <sup>1</sup> After this Court ruled in favor of Plaintiff on the arbitration issue, Perez v. Maid  
 28 Brigade, Inc., 2007 U.S. Dist. LEXIS 78412, appeal was taken to the Ninth Circuit. The  
 Ninth Circuit mediation program was an important catalyst assisting the parties in  
 achieving settlement.

1 alleges that she was frequently required to work through her rest and meal breaks.  
2 Plaintiff seeks equitable relief and to recover damages, statutory penalties, interest,  
3 attorney's fees, and costs on behalf of herself and the putative Class, as well as civil  
4 penalties under the California Labor Code Private Attorneys General Act. Plaintiff  
5 believes that the claims asserted in the litigation have merit under the Fair Labor  
6 Standards Act ("FLSA"), California's Unfair Competition Law (Business and  
7 Professions Code sections 17200 through 17208), and California Labor Code sections  
8 201 through 203, 218.5, 226, 226.7, 510, 1194, and 2698 *et seq.*, as well as under all  
9 applicable Industrial Welfare Commission Wage Orders. However, Plaintiff and her  
10 counsel recognize and acknowledge the cost and delay of continued proceedings  
11 necessary to prosecute the litigation through trial and appeal. Plaintiff and her counsel  
12 have also taken into account the uncertain outcome and the risk of loss in any litigation,  
13 especially in a complex action such as this one. Plaintiff and her counsel are also  
14 mindful of the inherent problems of proof under—and possible defenses to—the causes  
15 of action asserted in the litigation. Plaintiff and her counsel believe that the settlement  
16 set forth in this Stipulation of Settlement confers substantial benefits on Class Members.  
17 Based on their evaluation, Plaintiff and her counsel have determined that the settlement  
18 set forth in this Stipulation of Settlement is in the best interest of the Class.

19 Accordingly, although Plaintiff asserts that Defendants are variously liable to all  
20 Class Members for their unpaid wages, continuing wages, damages, liquidated damages,  
21 and penalties, none of the claims are certain, and this Court's recent decision with  
22 respect to certification issues in cases of this nature cautions that settlement is  
23 appropriate. Castle v. Wells Fargo Fin., Inc., 2008 WL 495705 (N.D. Cal. Feb. 20,  
24 2008). Under the circumstances, a settlement of \$90,000—which will likely pay all  
25 unpaid minimum-wage claims—is fair, adequate and reasonable.

26 Settling Defendants deny each and all of the claims and matters alleged by  
27 Plaintiff in the litigation. Settling Defendants expressly deny any and all charges of  
28 wrongdoing or liability arising out of any of the acts, omissions, facts, matters,

1 transactions, or occurrences alleged—or that could have been alleged—in the litigation.  
2 Settling Defendants contend that BMJ LLC employees in California are paid all owed to  
3 them and that they are afforded meal and rest breaks in compliance with California law.  
4 Because Settling Defendants believe they have complied with their obligations under the  
5 FLSA, the California Labor Code, and the applicable Wage Orders, Settling Defendants  
6 contend that Plaintiff’s claims for inadequate wage statements, waiting-time penalties,  
7 injunctive relief under the Unfair Competition Law, and civil penalties under the Private  
8 Attorneys General Act—which claims are all derivative of the unpaid-wage and meal-  
9 and-rest-break claims—will fail. Furthermore, Settling Defendants deny that the  
10 litigation would have been appropriate for certification under Federal Rule of Civil  
11 Procedure 23(a) and (b), except pursuant to a settlement, because of the intractable  
12 management problems that would have been associated with class-wide litigation.

13 Nevertheless, Settling Defendants have taken into account the uncertainty and  
14 risks inherent in any litigation and have also concluded that further conduct of the  
15 litigation would be protracted and expensive, especially in a complex case like this one.  
16 Settling Defendants, therefore, have determined that it is desirable and beneficial that the  
17 litigation be settled in the manner and upon the terms and conditions set forth in the  
18 Stipulation of Settlement. The defense seeks to obtain closure to this litigation, and  
19 through vigorous, contentious debate, they have negotiated a reasonable settlement with  
20 Plaintiff, acting on behalf of the class.

### 21 ***III. Conditional Class Certification.***

22 The Parties seek conditional certification under Rule 23 of the Federal Rules of  
23 Civil Procedure (“Rule 23”) of a class “all persons who were employed by BMJ LLC in  
24 California between July 7, 2003 and the date of the entry of the Order of Preliminary  
25 Approval and Certification of the Settlement Class and who do not file a timely request  
26 to be excluded from the Settlement.” (Stipulation of Settlement ¶ 5.1.C.) According to a  
27 review of Defendant BMJ LLC’s employment records, some one-hundred fifty  
28 individuals have been identified as Members of Settlement Class.



1 There is authority to the effect that pre-certification settlements are subject to a  
 2 somewhat higher level of scrutiny than those negotiated post-certification. Dunleavy v.  
 3 Nadler, 213 F.3d 454, 458 (9th Cir. 2000). However, concerns about the rights of absent  
 4 class members are satisfied by a careful fairness review of the settlement by the trial  
 5 court and the procedural protections provided by Rule 23 of the Federal Rules of Civil  
 6 Procedure. Officers for Justice v. Civil Serv. Comm’n, 688 F.2d 615, 624–25 (9th Cir.  
 7 1982), *cert denied*, 459 U.S. 1217 (1983). The trial court has wide discretion in  
 8 certifying a class for settlement purposes and will be reversed “only upon a strong  
 9 showing that the district court’s decision was a clear abuse of discretion.” Dunleavy,  
 10 213 F.3d at 461 (quoting Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1238 (9th Cir.  
 11 1998)).

12 Class actions are favored, and Rule 23 is to be given a broad, rather than  
 13 restrictive, interpretation in order to favor the maintenance of class actions. Adames v.  
 14 Mitsubishi Bank, Ltd., 133 F.R.D. 82, 88 (E.D.N.Y. 1989); Labbate-D’Alauro v. GC  
 15 Servs. Ltd. P’ship, 168 F.R.D. 451, 454 (E.D.N.Y. 1996).

16 Rule 23(a) contains four requirements that must be satisfied: (1) The class must  
 17 be so numerous “that joinder of all members is impracticable” (“numerosity”), (2) there  
 18 must be “questions of law or fact common to the class” (“commonality”); (3) the claims  
 19 of the representative plaintiff or plaintiffs must be “typical of the claims of the class”  
 20 (“typicality”); and (4) the class representative must show that he or she “will fairly and  
 21 adequately protect the interests of the class” (“adequacy”). Fed. R. Civ. P. 23(a).

22 The numerosity requirement is met. Again, the number of individuals within the  
 23 Settlement Class is one-hundred fifty. It has been held that a class of forty is sufficient  
 24 to justify certification. Int’l Molders’ & Allied Workers’ Local 164 v. Nelson, 102  
 25 F.R.D. 457, 461 (N.D. Cal. 1983). A class of twenty-five members may be sufficiently  
 26 numerous to justify certification. Perez-Funez v. Dist. Director, Immigration &  
 27 Naturalization Serv., 611 F. Supp. 990, 995 (C.D. Cal. 1984). Common sense indicates  
 28 that joinder of all one-hundred fifty class members is “impracticable” as that word is

1 used in Rule 23(a).

2 With respect to commonality, if there is at least one issue and if the resolution of  
3 that issue will affect all or a significant number of class members, then the commonality  
4 requirement is met. Lightbourn v. County of El Paso, 118 F.3d 421, 426 (5th Cir. 1997).  
5 Plaintiff is not required to show that there is commonality on every factual and legal  
6 issue. Dukes v. Wal-Mart Stores, Inc., 222 F.R.D. 137 (N.D. Cal. 2004); Jarvaise v.  
7 Rand Corp., 212 F.R.D. 1, 5 (D.C. D.C. 2002). The common questions of fact and law  
8 that affect Class Members include the following: (1) whether each Class Member was  
9 properly paid a minimum wage, (2) whether each Class Member received a paycheck  
10 from Defendant BMJ LLC that failed to comply with the requirements of section 226 of  
11 the California Labor Code, and (3) whether each Class Members was paid all of his or  
12 her wages earned while working through required rest periods and meal breaks. These  
13 questions of fact and law predominate over issues only affecting individual Class  
14 Members. Even if it should turn out to be the case that the class definition includes  
15 individuals who have not been injured or who do not wish to pursue claims against  
16 Defendants, this is *not* a bar to certification. Elliott v. ITT Corp., 150 F.R.D. 569, 575  
17 (N.D. Ill. 1992). Cf. Joseph v. General Motors Corp., 109 F.R.D. 635, 639-40 (D.C.  
18 Colo. 1986).

19 Plaintiff also meets the typicality requirement. Perez' claims are very similar to  
20 those of any and all absent Class Members. The fact pattern for Perez is similar, if not  
21 identical, to the fact pattern for other Class Members, and all Members of the Settlement  
22 Class, including Perez, have an interest in holding BMJ LLC responsible for payment of  
23 their unpaid wages to them.

24 Finally, Perez is an adequate class representative. Perez has no conflict of interest  
25 with the other Class Members, as she shares the same desire to be paid for her work. She  
26 is committed to pursuing the claims of the Class Members, and her motivation in  
27 retaining counsel and pursuing this action has solely been to collect unpaid wages for  
28 herself and for her fellow Class Members.

1 In addition to the four requirements set out by Rule 23(a), the action must also  
 2 meet one of the non-exclusive factors in Rule 23(b). Rule 23(b)(3) authorizes class  
 3 certification if a court determines (1) that “questions of law or fact common to the  
 4 members of the class predominate over any questions affecting only individual  
 5 members . . . and [2] that a class action is superior to other available methods for the fair  
 6 and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). As briefly  
 7 discussed with respect to the commonality requirement, questions of law and fact  
 8 predominate over questions affecting only individual members. Furthermore, as required  
 9 by Rule 23(b)(3), certifying this action as a class action is superior to the alternatives.  
 10 Realistically, the alternatives to conditional class certification are (1) one-hundred fifty  
 11 claim proceedings before the Division of Labor Standards Enforcement (“DLSE”)  
 12 followed by one-hundred *de novo* trials in Superior Court, see, e.g., Bell v. Farmers Ins.  
 13 Exch., 115 Cal. App. 4th 715, 745–46 (2004) (“[A] losing employer [before the DLSE]  
 14 has a right to a trial de novo in superior court where the ruling of the hearing officer is  
 15 entitled to no deference.”); (2) one-hundred fifty separate actions in either this Court or  
 16 Superior Court; or, as is most likely, (3) the large majority of Class Members will never  
 17 have their claims determined on the merits.

18 For the foregoing reasons, this Court should conditionally certify the Settlement  
 19 Class.

#### 20 ***IV. Summary of the Proposed Settlement.***

##### 21 ***A. Settlement Fund and Payment of Claims.***

22 The total settlement amount is \$90,000. The settlement involves payments to  
 23 Members of the Settlement Class, which payments will be made on a claims-made basis.  
 24 All Members of the Settlement Class who timely submit valid proof-of-claim forms to  
 25 the Settlement Administrator will be eligible to receive a portion of the settlement fund.  
 26 The proof-of-claim forms will be reviewed by the Settlement Administrator for validity  
 27 and accuracy.

28 According to the Stipulation of Settlement, allocation of the \$90,000 settlement

1 amount will be as follows:

2 Class Members who file an Approved Claim will be paid an amount per  
3 Work Week worked during the Claims Period. This amount will be  
4 determined by the following formula: First, the Qualified Settlement  
5 Administrator shall reduce the Settlement Amount of \$90,000 by deducting  
6 (a) all attorneys' fees, costs and expenses of litigation approved by the  
7 Court and awarded to Plaintiff's Counsel, (b) the enhanced payment for  
8 Plaintiff approved by the Court and awarded to Plaintiff, (c) all fees to be  
9 paid to the Qualified Settlement Administrator associated with notices to the  
10 class and the administration of the Stipulation of Settlement and all costs  
11 associated with distribution of Individual Settlement Amounts to Class  
12 Members, and (d) \$2,500 to be paid to the California Labor and Workforce  
13 Development Agency. Second, the Qualified Settlement Administrator will  
14 divide the remainder from that calculation by the total number of Work  
15 Weeks worked by all Class Members who submit an Approved Claim  
16 during the Claims Period. The Individual Settlement Amount for each Class  
17 Member who files an Approved Claim will then be calculated by  
18 multiplying this amount by the number of Work Weeks worked for BMJ  
19 LLC by the Class Member during the Claims Period.  
20 (Stipulation of Settlement ¶ 5.3.F.3.) Within its files, BMJ LLC has copies of payroll  
21 records from which the parties may determine the total weeks worked by each Class  
22 Member.

23 ***B. Tax Implications.***

24 The parties agree that no taxes will be withheld or paid from the Settlement  
25 Amount with respect to statutory penalties, continuing wages, liquidated damages,  
26 attorney's Fees and costs, or administrations fees and costs. The parties acknowledge  
27 and agree that proper information reporting will be made to the appropriate taxing  
28 authorities regarding all payments made pursuant to the settlement.

1           ***C. Plaintiff's Incentive Award.***

2           The Stipulation of Settlement provides for an additional payment in the amount of  
 3 up to \$5,000 to Perez on account of the services that she has rendered to the Settlement  
 4 Class in bringing this action and on account of the time that she has devoted in support  
 5 of this action. Settling Defendants have agreed and have made no objection to Plaintiff's  
 6 incentive award. Incentive awards "are not uncommon and can serve an important  
 7 function in promoting class action settlements." Sheppard v. Consol. Edison Co. of  
 8 N.Y., Inc., 2002 U.S. Dist. LEXIS 16314 at \*16 (S.D.N.Y. August 1, 2002). "Courts  
 9 routinely approve incentive awards to compensate named plaintiffs for the services they  
 10 provided and the risks they incurred during the course of the class action litigation." In  
 11 re S. Ohio Corr. Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997), *rev'd on other grounds*,  
 12 191 F.3d 453 (6th Cir. 1999).

13           Plaintiff's payment of \$5,000 shall be in addition to whatever portion of the  
 14 settlement fund she is otherwise entitled to receive. In light of her willingness to come  
 15 forward with this action on behalf of Class Members, and in light of her effort in  
 16 advancing the litigation, this represents a small amount. Upon discharge from her work,  
 17 Plaintiff obtained the services of counsel. Plaintiff informed counsel of her situation and  
 18 of her similarity with other Class Members. Despite the risk of not being hired to work  
 19 in another similar job, Plaintiff brought this action forward.

20           Moreover, in furtherance of this action, Plaintiff has also expended significant  
 21 time with counsel. She has met with counsel in-person or by telephone conference on  
 22 numerous occasions. In addition, she has dedicated hours to reviewing and preparing  
 23 discovery requests and responses. She has also dedicated time to gathering and  
 24 reviewing documents for this action. She also provided invaluable legwork *before* this  
 25 action was even filed.

26           In light of Plaintiff's time in bringing and maintaining this action, she should be  
 27 awarded an incentive payment of \$5,000. As a result of her efforts, Class Members will  
 28 finally receive full or nearly full payment of their unpaid wages.

***D. Release of Claims.***

Settlement Claimants will release all of their relevant FLSA and California Labor Code claims against Settling Defendants.<sup>2</sup> (Stipulation of Settlement ¶ 5.1.P.)

***E. Opt-Outs and Objections.***

Members of the Settlement Class will be given an opportunity to object or opt out of the Settlement Agreement. (Stipulation of Settlement ¶ 5.4.C.) The proposed class notice provides instruction to Class Members who wish to opt out and/or object to the settlement. The timeline for submitting opt-outs and for filing objections shall be sixty days from the date of mailing of the notice. (Stipulation of Settlement ¶ 5.4.C.)

***F. Termination of Settlement.***

Defendants reserve the right to terminate the Settlement Agreement if more than ten percent of the Settlement Class opt out. (Stipulation of Settlement ¶ 5.4.D.)

***V. Class Notice and Proof-of-Claim Form.***

Class notice shall be mailed to the approximately one-hundred fifty Class Members identified by Defendant BMJ LLC. The notice shall be accompanied by a proof-of-claim form. (Stipulation of Settlement ¶ 5.4.B.) These materials will be mailed by first-class U.S. mail to the person's last known address. (Stipulation of Settlement ¶ 5.4.B.) Class notices returned as undeliverable will be investigated by the Settlement Administrator. (Stipulation of Settlement ¶ 5.4.F.) The Settlement Administrator subscribes to an online Lexis database that researches a person's current addresses. The Settlement Administrator shall consult the database and send additional notices to more recent addresses obtained through that process by first-class U.S. mail.

As provided within the Stipulation of Settlement, the proof-of-claim form will be mailed to Members of the Settlement Class, along with the Class notice. The proof-of-claim form requests the Member's current telephone and address information. Providing

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<sup>2</sup> "Released Claims" is defined with reference to the specific claims asserted by Plaintiff in the operative Complaint. In other words, Members of the Settlement Class do not, for example, release their potential claims for workers' compensation and/or unemployment insurance.



1 such information will ease the administration of claims and reduce settlement-  
2 administration costs.

3 ***VI. Attorney's Fees and Costs.***

4 The Stipulation of Settlement provides that Harris & Ruble's fees and costs  
5 incurred in litigation of this action and in administration of claims shall be paid from the  
6 settlement fund. Harris & Ruble, as Class Counsel, will not seek an award of fees that  
7 exceed \$30,000 of the settlement amount.

8 The amount of compensation to Harris & Ruble, as Class Counsel and Settlement  
9 Administrator, has been left entirely to the determination of the Court, with Class  
10 Members given the opportunity to object. Pursuant to this Court's instruction, Harris &  
11 Ruble will file a motion approving an award of fees and costs *prior to* filing a motion for  
12 final approval of class-action settlement.

13 ***VII. The Settlement Is Fair, Reasonable, and Adequate.***

14 "The court may approve a settlement . . . that would bind class members only after  
15 a hearing and on finding that the settlement . . . is fair, reasonable, and adequate." Fed.  
16 R. Civ. P. 23(e)(1)(C). According to the Ninth Circuit in Dunleavy:

17 "Assessing a settlement proposal requires a district court to balance a  
18 number of factors: the strength of plaintiff's case; the risk, expense,  
19 complexity, and likely duration of further litigation; the risk of maintaining  
20 a class action status throughout the trial; the amount offered in the  
21 settlement; the extent of discovery completed and the stage of the  
22 proceedings; the experience and views of counsel; . . . and the reaction of  
23 the class members to the proposed settlement."

24 Dunleavy, 213 F.3d at 458 (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th  
25 Cir. 1998). However, certain factors may predominate in different factual contexts.  
26 Indeed, one factor may predominate over all the others and provide sufficient grounds  
27 for approval of a settlement. Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th  
28 Cir. 1993).

1       ***A. Strength of Plaintiff's Case.***

2       Plaintiff believes that she has a strong case under the California Labor Code and  
3       FLSA. Plaintiff and Class Members were employed by BMJ LLC, and many of Class  
4       Members did not receive payments due on account of Labor Code and/or FLSA  
5       violations. According to Plaintiff, many Class Members were not paid all of their wages.

6       Settling Defendants deny Plaintiff's contentions and allegations with regard to the  
7       alleged violations.

8       ***B. Likely Duration of Further Litigation.***

9       This Action has been pending in the court system for almost a year. According to  
10      Plaintiff, Class Members and she still remain unpaid for wages earned over the past five  
11      years. Granting approval of this class-action settlement would create a settlement fund  
12      that would likely get the participating Class Members finally paid in full. Because the  
13      putative Class has not been certified and notices have not been sent out, in the absence of  
14      a settlement, the likely duration of further litigation of this action could continue for  
15      more than an additional year.

16      ***C. The Amount Offered in the Settlement.***

17      The amount of the settlement fund is \$90,000. Although this is not the amount that  
18      Plaintiff or Settling Defendants hoped for, settlement does represent a compromise by  
19      the parties in light of the risks and costs of further litigation. The settlement will not  
20      totally compensate Class Members for all possible penalties; however, it should provide  
21      full payment of their unpaid wages. It should be noted that not all Class Members may  
22      have due and owing wages for various reasons, including (1) they did not miss meal  
23      breaks or rest periods and/or (2) they were not required to work for less than the  
24      minimum wage.

25      ***D. Extent of Discovery Completed and the Stage of the Proceedings.***

26      The parties have conducted significant discovery, both formal and informal. There  
27      was an exchange and review of thousands of documents as a result of the Rule 26  
28      disclosures. The parties have conducted informal interviews regarding the background



1 of the case. Plaintiff notes that, whether or not extensive formal discovery has been  
 2 conducted, “in the context of class action settlements, ‘formal discovery is not a  
 3 necessary ticket to the bargaining table’ where the parties have sufficient information to  
 4 make an informed decision about the settlement.” Dunleavy, 213 F.3d at 459 (quoting  
 5 Linney, 151 F.3d at 1239).

#### 6 ***E. Experience and Views of Counsel.***

7 As reflected in the accompanying Harris Declaration, Alan Harris has substantial  
 8 experience in prosecuting class actions, including actions involving the application of  
 9 the California Labor Code and the FLSA. Although he acknowledges that some persons  
 10 aligned with the interests of employees might feel that Defendants should pay more and  
 11 that some persons aligned with the interests of employers might feel that Defendants are  
 12 paying too much, he is of the opinion that the proposed settlement represents a very  
 13 reasonable bargain for both sides of this lawsuit. Considering the inherent risks, hazards,  
 14 and expenses of carrying the case through trial, counsel is of the opinion that the  
 15 settlement is fair, reasonable, and adequate. Settling Defendants have reached a similar  
 16 conclusion.

#### 17 ***F. Reaction of Class Members to Proposed Settlement.***

18 At this stage, the reaction of Class Members to the proposed settlement cannot be  
 19 known until preliminary approval is given, notice is sent out, and responses to that notice  
 20 are received.

#### 21 ***VIII. Appointment of Settlement Administrator.***

22 The Stipulation of Settlement provides for the appointment of a settlement  
 23 administrator to administer the claims process. If approved by the Court, Class  
 24 Counsel—Harris & Ruble—will act as Claims Administrator.

#### 25 ***IX. Proposed Calendar.***

26 Plaintiff proposes the following calendar:

- 27 A. June 2008: The Court conditionally certifies the class action, preliminarily  
 28 approves the class-action settlement, appoints a claims administrator,

approves the form and mailing of the class notice, proof-of-claim form, and opt-out form.

- B. July 2008: Class notices and proof-of-claim forms shall be mailed to Class Members.
- C. September 2008: All claims must be postmarked. All opt-outs and objections must be postmarked and filed no later than this date.
- D. September 2008: The Settlement Administrator will provide a report to Settling Defendants regarding the number of claims and opt-outs submitted.
- E. September 2008: Class Counsel shall file a motion for fees and reimbursement of costs.
- F. October 2008: Class Counsel shall file a motion for final approval of class-action settlement.
- G. November 2008: Hearing on objections (if any), motion for final approval of class settlement, and motion for fees and reimbursement of costs.

**X. Conclusion.**

It is respectfully submitted that the settlement embodied in the Stipulation of Settlement attached to the Harris Declaration is fair, reasonable, and adequate. The Court should grant conditional certification of the class action, appoint a Settlement Administrator, and approve the form and means of giving notice. The Court should also set the matter for a final-approval hearing.

Dated: May 23, 2008

HARRIS & RUBLE

/s/

Alan Harris  
*Attorneys for Plaintiffs*

**PROOF OF SERVICE**

I am attorney for Plaintiff herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 5455 Wilshire Boulevard, Suite 1800, Los Angeles, California 90036. On May 23, 2008, I served the within document(s): **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT.**

I caused such to be delivered by hand in person to:

N/A

I caused such to be delivered by fax or e-mail to:

N/A

I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice, the document(s) would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

N/A

I caused such to be delivered via the Court's CM/ECF System:

James Bowles  
jbowles@hillfarrer.com  
docket@hhillfarrer.com  
lforte@hillfarrer.com  
smcloughlin@hillfarrer.com

Michelle Johnson  
michelle.johnson@nelsonmullins.com

Patrick Macias  
pmacias@rjlawllp.com

Edward McLoughlin  
smcloughlin@hillfarrer.com  
avillar@hillfarrer.com  
docket@hillfarrer.com

Daniel Shea  
Daniel.shea@nelsonmullins.com

I declare under penalty of perjury that the above is true and correct. Executed on May 23, 2008, at Los Angeles, California.

/s/  
\_\_\_\_\_  
David Zelenski